IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER STAMP NO. 6048 OF 2005

WITH

CIVIL APPLICATION STAMP NO. 6050 OF 2005

Rajnath S. Mishra ..Appellant

versus

1. Municipal Corporation of
   Greater Bombay
2. Girish Lodha ..Respondents

Mr. A. M. Saraogi for the Appellant.
Mr. J. J. Xavier for the Respondent No.1 - BMC.
Mr. H.S.S. Murthy for the Respondent No.2.

CORAM : D. G. DESHPANDE,J.

DATE : 7TH MARCH ,2005

ORAL ORDER :

1. Heard counsel for the parties.

2. This Appeal from Order is filed against the order by which ad interim injunction granted in favour of the plaintiff - appellant restraining BMC from taking action in respect of the suit structure came to be vacated. Counsel for the plaintiff - appellant took me through the different documents

filed along with this appeal memo in order to show that he has a right in the suit structure for more than 40 years from now.

3. As against this, counsel for the BMC - Respondent No.1 on the basis of the instructions given to him by Mr. D. B. Bhagat - Sub Engineer (Maintenance) R/Central Ward, who is present in court, states that the demolition of this particular structure is in progress and according to him 50% of structure has been demolished. This was contradicted by counsel for the appellant and he pointed out that the board of the structure is demolished or removed.

4. Counsel for the BMC however tendered before me a copy of the map as per which the structure falls in the road widening T.P. Scheme. He also took me through the order of the Assistant Commissioner which came to be passed pursuant to the directions given by this Court. This order is in compilation page No.208. The Assistant Commissioner R/C Ward has considered all the documents of the building. But the main question that goes against the plaintiff - appellant is that it is clear that the suit structure falls in the sanctioned T.P.S. (II) 1st Variation (final) Borivali (E) the land / roads and this property vests with the M.C.G.M.

from the date of sanctioned T.P. Scheme. T. P. Scheme was sanctioned in 1995-1996/

5. In view of the facts that the suit structure is falling in the aforesaid scheme, stage of demolition and also looking to the fact that road widening is always in the interest of the public, I do not find any reason to interfere with the impugned order. My attention was drawn by Counsel for the Appellant to page 247, which is a letter written by BMC, requesting the Ward Officer to make an inventory of the authorised tenements / occupants in the existing authorised structures and decide about the eligibility for providing alternate accommodation. Therefore, it is clear that in case the plaintiff - appellant succeeds in establishing his right, he will have a right of alternate accommodation. In the result, Appeal from Order is dismissed alongwith Civil Application. All issues are kept open.

7.03.2005 (D.G. DESHPANDE, J.)